IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

ORDER
IN
S.B. Civil Second Appeal No.345/2000

Union of India through the General Manager
North Eastern Railway, Gorakhpur
...defendant-appellant
Versus
M/s Jaipur Namada Factory
...plaintiff-respondent

Date of Order ::: 26.7.2006

Hon'ble Mr. Justice Narendra Kumar Jain

Shri Alok Garg for the appellant
Shri J.P. Goyal for the respondent
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By the Court:-

Heard learned counsel for the parties.

This second appeal, under Section 100 of the Code of Civil Procedure (for short, the 'CPC'), on behalf of the defendant-appellant, is directed against the judgment and decree dated 10th of May, 2000, passed by the Additional District Judge No.2, Jaipur City, Jaipur, in Regular Civil Appeal No.83/95, whereby the appeal of the plaintiff-respondent was allowed and the suit of the plaintiff-respondent was decreed against the judgment and decree dated 23rd of September, 1995 passed by the Additional Civil Judge & Additional Chief Judicial Magistrate No.2, Jaipur City, Jaipur, in Civil Suit No.90/95, whereby the suit of the plaintiff-respondent for recovery of a sum of Rs.6,297.68p. Was dismissed.

Learned counsel for the plaintiff-respondent raised a preliminary objection about maintainability of the

present second appeal. His contention is that this second appeal has arisen out of a suit for recovery of Rs.6297.68p., whereas Section 102 of the CPC has been amended with effect from 1st of July, 2002 vide CPC (Amendment) Act, 2002, and, in view of the amended Section 102, the second appeal does not lie from any decree where the subject-matter of the original suit is for recovery of money not exceeding twenty-five thousand rupees. He contended that the appeal has not been admitted so far, therefore, the same is not saved by Section 16 (2)(a) of the CPC (Amendment) Act, 2002 and, as such, the present second appeal is liable to be dismissed being not maintainable. He placed reliance upon the decisions of this court in the following cases:-

1. Unna Ram Vs. Smt. Geeta Devi {RLR 2003 (2) 413}

2. Mangi Lal Vs. Krishi Upaj Mandi {2003 (3) WLC (Rajasthan) 352).

Learned counsel for the defendant-appellant contended that the present second appeal was filed in this court on 24th of August, 2000, whereas Section 102 of the CPC was amended vide CPC (Amendment) Act, 2002, with effect from 1st of July, 2002, therefore, the said Amendment is not applicable on the present case. He also contended that even if the subject-matter of the original suit for recovery of money does not exceed twenty-five thousand rupees and if a substantial question of law is involved then second appeal is maintainable, therefore, the present second appeal should not be dismissed being not maintainable in view of the amendment made in Section 102 of the CPC.

Whether the second appeal filed but not admitted before 1st of July, 2002 is governed by amended Section 102 of the CPC, is a question which is required to be answered in the present case.

Section 102 of the CPC was amended with effect from 1st of July, 2002, vide CPC (Amendment) Act, 2002. As per unamended Section 102 of the CPC it was provided that no second appeal shall lie from any decree when the subject-matter of the original suit is for recovery of money not exceeding rupees three thousand, whereas, as per amended Section 102, the amount of Rs.3000/- has been substituted to a sum of Rs.25,000/-, meaning thereby – after 1st July, 2002 it has been provided that no second appeal shall lie from any decree when the subject-matter of the original suit is for recovery of money not exceeding Rs.25,000/-.

Section 16 of the CPC (Amendment) Act, 2002, provides for repeal and savings, and the relevant part thereof is as under:-

> "(1) .. ..
>
> (2) Notwithstanding that the provisions of this Act have come into force or repealed under sub-section (1) has taken effect, and without prejudice to the generality of the provisions of Section 6 of the General Clauses Act, 1897:-
>
> (a) The provisions of Section 102 of the Principal Act, as substituted by Section 5 of this Act, shall not apply to or effect any appeal which had been admitted before the

> commencement of Section 5, and every such appeal shall be disposed of as if Section 5 had not come into force.. .. .. .."

The above referred Section 16 of the CPC (Amendment) Act, 2002, makes it clear that the provisions of Section 102 of the Principal Act, as substituted by Section 5 of the CPC (Amendment) Act, 2002, shall not apply to or effect any appeal which had been admitted before commencement of Section 5 of the CPC (Amendment) Act, 2002. Therefore, it leaves no doubt that by virtue of Section 16 of the CPC (Amendment) Act, 2002, only those appeals have been saved which had been admitted before commencement of Section 5 of the CPC (Amendment) Act, 2002, with effect from 1st of July, 2002.

The above question was also considered by this Court in the case of Unna Ram Vs. Smt. Geeta Devi (RLR 2003 (2) 413, wherein the decision of the Hon'ble Apex Court in the case of Union of India & Others Vs. Indian Charge Chrome & Another, (1999) 7 SCC 314, was considered and therein their Lordships of the Hon'ble Supreme Court held that mere pendency of an application does not govern the law applicable and it is the relevant law prevailing on the date of decision-making which has to be applied. This Court in Unna Ram's case (supra) further considered the decision of the Hon'ble Apex Court in Anand Gopal Sheorey Vs. State of Bombay, AIR 1958 SC 915, wherein their Lordships of the Hon'ble Supreme Court held that no person has a vested right in any course of procedure. It is the law and the manner prescribed for the time-being by or for the Court in

which the case is pending and if by the Act of the Parliament the mode of procedure is altered, he has no other right other than to proceed according to the altered mode. In other words, the change in law of procedure operates retrospectively and unlike the law relating to vested right, is not only prospective.

After considering the aforesaid judgmnets and other judgmnets of the Hon'ble Supreme Court as well as of other High Courts, this Court in Unna Ram's case (supra) held as under:-

> "22. The amendment in Section 102 of the Code has been made by Section 5 of the Code of Civil Procedure (Amendment) Act, 2002, and the amended provisions read as under:-
>
> > "Sec.102: No second appeal in certain cases: No second appeal shall lie from any decree when the subject-matter of the original suit is for recovery of money not exceeding Rs.25,000/-."
>
> 23. Section 16 of the said Amendment Act, 2002 provides for Repeal and Savings and relevant part thereof is as under:-
>
> > "(1) .. ..
> >
> > (2) Notwithstanding that the provisions of this Act have come into force or repealed under sub-section (1) has taken effect, and without prejudice to the generality of the provisions of Section 6 of the General Clauses Act, 1897:-
> >
> > (a) The provisions of Section 102 of the Principal Act, as substituted by Section 5

> of this Act, shall not apply to or effect any appeal which had been admitted before the commencement of Section 5, and every such appeal shall be disposed of as if Section 5 had not come into force.. .. .. .."
>
> 24. Thus, it is evident from the aforesaid clauses that even if there is a right accured under Section 6 of the Act, 1897, that had been taken away by the Amendment Act, 2002 in those cases where the appeals have not been admitted before the commencement of the Amendment Act, i.e. from 1.7.2002.
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> 25. Thus, it is evident from the aforesaid provisions that the unamended provisions shall be applicable in those appeals which had been admitted prior to 1.7.2002 and where appeals might have been filed/presented in the Registry but if not admitted prior to that date, the new provisions will govern the proceedings."

Again this Court in Mangi Lal's case (supra) while considering the same question, considered the decision of the Hon'ble Supreme Court in the case of Roop Singh through LR's Vs. Ram Singh through LR's (2000) 3 SCC 708, wherein their Lordships of the Hon'ble Supreme Court considered the question of jurisdiction of High Court as to when does High Court gets jurisdiction in second appeal, and held as under:-

> “Under Section 100 CPC jurisdiction of the High Court to entertain a second appeal is confined only to such appeals which involve a substantial question of law and it does not

> confer any jurisdiction on the High Court to interfere with pure question of fact."

The learned counsel for the appellant does not dispute that neither this second appeal has been admitted so far nor therein any substantial question of law has been framed by this court.

In view of the above discussion, I find that the present second appeal, which has neither been admitted so far nor therein any substantial question of law has been framed, is not saved by Section 16 of the CPC (Amendment) Act, 2002, and the amended Section 102 of the CPC is applicable in the present matter, and thus, in view of the fact that the subject-matter of the original suit, out of which this appeal arises, is for recovery of money not exceeding Rs.25000/-, as the suit was for recovery of money of Rs.6,297.68p. only, the present second appeal is not maintainable and it deserves to be dismissed as not maintainable.

In the result, the present second appeal is dismissed as not maintainable.

(Narendra Kumar Jain) J.

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